

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

PAULINO AGUILERA-SANDOVAL,	§	
	§	Civil Action No. 4:14-CV-794
v.	§	Criminal Action No. 4:09-CR-023(14)
	§	
UNITED STATES OF AMERICA	§	

**MEMORANDUM ADOPTING INITIAL REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

The above-entitled and numbered civil action was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation (Dkt. #12) concluding that Petitioner's motion for summary judgment (Dkt. # 10) should be denied. Movant filed objections.

In Movant's objections, he contends that a summary judgment motion is proper in his case. Movant cites to *Smith v. Cockrell*, 311 F.3d 661 (5th Cir. 2002), *overruled in part by Tennard v. Dretke*, 542 U.S.274 (2004), and *United States v. Kayode*, 777 F.3d 719 (5th Cir. 2014). In *Smith*, the Fifth Circuit briefly discussed the interplay between the Federal Rules of Civil Procedure and the more specific rules governing habeas proceedings. As discussed in *Smith*, Federal Rule of Civil Procedure 56 is applicable in habeas proceedings in so far that it does not conflict with the habeas rules. *Smith*, 311 F.3d at 667. In *Kayode*, the court did not discuss Rule 56 and how it affects the habeas rules; Movant appears to cite the case only as an example that courts sometimes entertain motions for summary judgment in habeas proceedings. *See generally United States v. Kayode*, 777 F.3d 719 (5th Cir. 2014) (affirming the lower court's grant of summary judgment).

The United States District Court for the Eastern District of Texas has continuously ruled that motions for summary judgment, as contemplated by the Federal Rules of Civil Procedure, are not appropriate in habeas contexts. *See, e.g., Hao Van Lee v. United States*, Case No. 4:16-cv-286,

Dkt. No. 21 (order adopting R&R recommending the court deny motion for summary judgment as inappropriate in § 2255 proceedings); *Gilmore v. Director of TDCJ-CID*, Case No. 4:15-cv-173, Dkt. No. 29 (order adopting, over petitioner's objection, R&R recommending the court deny motion for summary judgment as inappropriate in § 2254 proceedings). As the Magistrate Judge noted, a motion for summary judgment, for example, seeks the same relief as that sought in the underlying habeas action. The procedure for seeking correction of a judgment is set forth in the *Rules Governing Section 2255 Procedure for the United States District Courts*. Having made a *de novo* review of Movant's objections and found them to be without merit, the Court concludes the findings and conclusions of the Magistrate Judge are correct, and adopts the same as the findings and conclusions of the Court.

It is accordingly **ORDERED** that Movant's motion for summary judgment (Dkt. # 10) is **DENIED**.

SIGNED this 19th day of October, 2017.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE